IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

CRL.A.No. 41 of 2000

ST.571/1997 of JUDL.MAGISTRATE OF FIRST CLASS-II, PERAMBRA

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APPELLANT/COMPLAINANT:

SECRETARY,
CHANGAROTH GRAMA PANCHAYAT

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS:

C.P.NARAYANA KURUP,
S/O SANKARAN NAIR,
PALERI, CHARIZHA PURATH,
P.O. PALERI, KOZHIKODE

BY ADV. SRI.P.K.SURESH KUMAR
PUBLIC PROSECUTOR C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K.BASHEER, J.

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Crl.A.No.41 OF 2000

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JUDGMENT

Dated 1st Dec. 2007

A.K.BASHEER, J.

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Crl.A.No.41 OF 2000

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Dated this the 1st day of December 2007

JUDGMENT

Changaroth Grama Panchayat represented by its Secretary is the appellant. The Panchayat had launched prosecution against the respondent under Section 210 of Kerala Panchayat Raj Act alleging that he had failed to remit the balance of the bid amount payable by him in respect of the auction settled in his favour for the right to remove river sand from the Panchayat area. According to the Panchayat, out of the total bid amount of Rs.1,13,600/- payable by the respondent for the period from April 1995 to March 1, 1996, only a sum of Rs.34,800/- had been paid by him. Thus, there remained a balance of Rs.51,202/-. The Panchayat had unsuccessfully tried to recover the amount from the respondent as provided under Section 210 of the Act. The complaint was filed when the Panchayat failed in its attempt to effect recovery.

2. Before the trial court the then Secretary of the Panchayat was examined as PW1. The ward-member of the Panchayat was examined as PW2. Exts.P1 and P2 were marked on the side of the prosecution. The former President of the Panchayat was examined on the side of the defence as DW1 and one document was also produced on his side.

3. The trial court on evaluation of the oral and documentary evidence took the view that the Panchayat had failed to prove that “distraint or sufficient distraint of defaulter's property was impracticable”. While examined as PW1, the Secretary/appellant, had stated that the procedure as contemplated under the Rules had been completed and that it was found that distraint of any movables belonging to the defaulter (respondent) was impracticable.

4. It has to be remembered that PW1 in his capacity as Secretary of the Panchayat had categorically asserted that the procedure prescribed under the Rules had been followed before launching the prosecution. He had further stated that a distraint warrant (Ext.P4) was issued from the Panchayat.

Thereafter, a demand notice was also issued to the respondent/accused. Though the accused had accepted the notice, he had not replied to that nor had he remitted the dues as demanded by the Panchayat.

5. Having perused the materials available on record, particularly the evidence of PW1 and PW2, I have no hesitation to hold that the court below ought to have considered the issue in its true perspective. The appellant who is a public servant in charge of the administration of the Panchayat had categorically stated that in discharge of his public duty a distraint warrant had been issued to the defaulter. Every official duty is presumed to be done in a proper and legal manner. The respondent has not been able to point out any infirmity or irregularity to draw a contra presumption in the case on hand.

6. It is true that the person who had executed the distraint warrant was not examined. Learned counsel for the respondent has vehemently contended that in the absence of any proof of execution of the distraint warrant, the court

below was justified in dismissing the complaint. I am unable to agree.

7. I do not propose to go any further on this aspect, in view of the order that I propose to pass. Having regard to the entire facts and circumstances, I am satisfied that the impugned order of acquittal is liable to be set aside. I do so. The court below shall re-consider the matter and dispose of the case afresh in accordance with law after affording sufficient opportunity to the complainant and the accused to be heard. Parties shall appear before the court below on January 28, 2008.

The court below shall dispose of the case as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment. Registry shall send back the records to the court below forthwith.

(A.K.BASHEER, JUDGE)

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